

FPPC Advice Summaries

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance may be provided to persons whose duties under the act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an "A," while informal assistance is identified by the letter "I." Letters are summarized by subject matter and month issued.

Campaign

**Vona Copp, Treasurer
Nakanishi for Assembly 2004**

Dated: June 9, 2004

File Number I-04-105

Campaign funds held in an incumbent's Assembly 2004 reelection committee may not be used to pay debts of the candidate's old committees. However, the funds may be transferred. When transferring into an *Assembly 2002 committee*, attribution is required. With respect to two old committees (*Assembly 1998 and Senate*), attribution is not required. Given that attribution is

not applicable, contributors to the 2004 committee may not make replacement contributions to the 2004 committee, ensuring there is no evasion of the contribution limits applicable to the 2004 election. These funds, once transferred, will be surplus funds subject to section 89519.

Victor Quiroz

Friends of Victor Quiroz

Dated: June 10, 2004

File Number A-04-112

A candidate may not hold a campaign fundraiser in the name of another entity. This letter also provides a general discussion of a controlled committee, the "one bank account" rule, and when a nonprofit organization would become a controlled committee.

Matt Rexroad, Mayor

City of Woodland

Dated: June 29, 2004

File Number A-04-114

Payments received principally for a charitable purpose (held in trust by the community for the children of a soldier who was killed in Iraq) are payments for a cosponsored event and not reportable contributions or gifts so long as the payments are not used for any purpose, other than making a gift to the widow and her children. The payments must still be reported within 30 days of the date on which any payment (or aggregated payments from the same source) reaches \$5,000. The report will be filed with the elected officer's agency and will be a public record subject to inspection and copying. The report must contain the name of the payer, address of payer, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made.

Kimberly Rodrigues

City of San Buenaventura

Dated: June 9, 2004

File Number A-04-117

The Political Reform Act does not require local filing officers to post any campaign disclosure

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statements on the Internet. With respect to paper filings, the city clerk's office for the City of San Buenaventura may not redact information required to be filed with its office under the provisions of the Act.

Mike Clesceri, Mayor

City of Fullerton

Dated: June 30, 2004

File Number A-04-131

A contribution will not be made to a city mayor when he appears on a local cable access television show as long as the episodes on which he appears do not contain express advocacy, do not make reference to his candidacy for elective office or any of his opponents for elective office, and do not solicit contributions. A cable television program is not considered a mass mailing under the Act.

Caren Daniels-Meade

Political Reform Division

Dated: May 27, 2004

File Number I-03-193

Under sections 81010(b), 84612 and regulation 18110, the Secretary of State, as filing officer, has the authority to reject an online or electronic filing which lacks the basic information necessary to identify the filer and/or filing, such as the name of the filer, the name of the committee, the office or measure, the election, or the signature of the filer. For filings lacking other information on a form, the summary page, or an attached schedule, the FPPC interprets the above sections of the Act and regulations to require that such filings be accepted by the filing officer, and that the filer be contacted to provide any missing information.

Jennifer Tierney

Friends of Mayor Dick Murphy

Dated: May 19, 2004

File Number A-04-094

A candidate controlled committee may contract with or hire the adult daughter of the controlling candidate to provide the committee with services that have a political, legislative, or governmental purpose.

Hiley Wallis

Tulare County Registrar of Voters

Dated: May 26, 2004

File Number I-04-115

A county is advised that the second pre-election and semi-annual campaign statements may be combined in connection with an August 3, 2004, recall election for the Farmersville Unified School District.

Lance H. Olson

California Democratic Party

Dated: April 20, 2004

File Number A-04-045

A state political party is advised on a number of advertising disclosure requirements applicable when the party makes expenditures regarding ballot measures. The advice discusses the rules in the context of both coordinated and independent expenditures. For purposes of section 84503, "chronological sequence" means the two most recent contributors of identical amounts.

Linda Trask-Lee

Dated: April 19, 2004

File Number I-04-047

An organization formed to educate prospective candidates on how to organize campaigns and run for office, and to educate voters on progressive issues and endorse progressive candidates would qualify as a "committee" and be required to file a Statement of Organization (Form 410) if it receives contributions of \$1,000 or more in a calendar year for a political purpose. Once it has become a committee, it must report all contributions received, expenditures made, unpaid bills and miscellaneous increases to cash on either Form 450 (short form) or Form 460 (long form), depending on the type of information it had to report.

Barry L. Matthews

Friends of Barbara Matthews 2004

Dated: April 14, 2004

File Number A-04-075

A check may be attributed to the primary election when the original check was received prior to and intended for the primary election, but was unsigned, returned to the contributor for signa-

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ture, lost, and subsequently provided to the committee in the form of a replacement check.

Judy Hauff
City of Rohnert Park
Dated: April 22, 2004
File Number A-04-084

A city is advised that pre-election statements filed by candidates and committees being voted on in an August 2004 special election can be combined with the semi-annual filing due July 31, 2004.

Kirk Knight
John Campbell for Senate
Dated: April 30, 2004
File Number A-04-088

A Senate committee may not use funds which have been designated for the 2004 general election to pay primary election debt, unless the aggregate of any contribution attributed to a single contributor, when combined with all the contributions made by that contributor to the primary election, do not exceed the applicable primary election contribution limit.

David Bauer
McClintock for Senate
Dated: March 1, 2004
File Number A-03-292

The contribution limits of section 85301 do not apply to ballot measure committees. A payment by a candidate controlled ballot measure committee to another committee controlled by the same candidate is neither a "contribution" nor a "transfer" under the circumstances presented here, where the payment is merely a repayment of an outstanding loan.

Lance H. Olson
State Insurance Commissioner
Dated: March 1, 2004
File Number I-04-010

A statewide officeholder may use campaign funds raised into a future reelection committee to the same incumbent office for ongoing expenses associated with holding the incumbent office.

James Bieber
Bieber Communications
Dated: March 3, 2004
File Number I-04-014

Employment as a direct mail vendor does not, by itself, create a presumption of coordination for purposes of regulation 18550.1.

Chris Modica, Treasurer
California Tax Fighter's Coalition
Dated: March 2, 2004
File Number A-04-022

The Act does not limit the amount of contributions a recipient committee may receive from a single source to make independent expenditures, or to make contributions to ballot measure committees and local candidates, unless a contributor acts as an agent of the state candidate which is supported by the committee.

Ben Davidian
California Assembly
Dated: March 15, 2004
File Number A-04-061

In a close race, the costs of legal fees and expenses incurred directly in connection with the ballot count or recount are integral to the election and fall within the definition of "net debts outstanding from the election" in section 85316 and regulation 18531.61(d).

William Y. Sheh
Laborers Local 300
Dated: March 16, 2004
File Number A-04-048

A sponsored committee should report administrative expenses paid by its sponsor on Form 460, Schedule C as a nonmonetary contribution, with a "memo entry" noting that the administrative expenses were paid by the sponsor.

Alan L. Olsen, CPA
City of Fremont
Dated: March 25, 2004
File Number A-04-071

A council member is advised regarding the transfer of funds from an existing local officeholder account to his campaign committee established for the local mayoral election. The letter advises that the transfer and attribution provisions of section

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85306 do not apply in this context and advises on the method of reporting the transfer on the respective committees' Form 460.

Conflict of Interest

William D. Esselstein
Menlo Park Fire Protection District Bd.
Dated: June 14, 2004
File Number I-03-293

Two officials of the same agency who are sources of income to one another requested advice regarding their voting on one another's election to an office of their agency, and also the reimbursement of travel-related expenses. Since officers serve in an unpaid capacity, the requestors were advised that election to office would not have a reasonably foreseeable material financial effect and each could vote on the election of the other. However, the reimbursement of expenses would have a reasonably foreseeable material financial effect upon the recipient of the reimbursement. Thus, the officials were advised that they would have a conflict of interest precluding either one from voting on the reimbursement of expenses claimed by the other.

Tom Rowe, P.E.
City of Solvang
Dated: June 7, 2004
File Number A-04-058

The city hires an engineer to act as a city engineer and determines that he is a consultant under its conflict of interest code. The consultant files a Form 700, Statement of Economic Interests, as a result of his position with the city. The consultant asks if he has a conflict of interest under the Act. It appears that with decisions relating to a specific project for which he will provide plan checking services, he will not have a reasonably foreseeable financial effect on his economic interests.

Ronald R. Ball
City of Carlsbad
Dated: June 14, 2004
File Number I-04-074

A consulting firm, which represented clients with applications before the planning commission, was a source of income to a planning commissioner whose spouse was employed by the firm. The firm's standard fee agreement did not make the amount payable to the firm contingent on the outcome of any governmental decision, but the standard agreement, by itself, did not foreclose the possibility that governmental decisions on the underlying project might have reasonably foreseeable material financial effects on the source of income.

William Lepowsky
Dated: June 4, 2004
File Number A-04-096

Under the "academic decisions" exception, the Act does not give rise to a conflict of interest or an impermissible honorarium for a faculty member or other college employee when purchasing a math textbook that the faculty member authored, for personal use or for delivery to another instructor at the college, and receiving reimbursement for the textbook from the college administration.

Ila Eileen Indelicato
Lockeford Community Services District
Dated: June 7, 2004
File Number A-04-104

A member of a local community services district board who is also a real estate agent was advised that she could vote with the board on whether to authorize an environmental study in connection with sewer service to a new subdivision, since it is not reasonably foreseeable that the mere act of conducting the study will have a material financial effect on her employer or on other sources of commission income to her. However, the official was advised that, under the facts she provided, voting on the acquisition of a waste water disposal sight and new facilities necessary to provide sewer service to the subdivision could have a reasonably foreseeable material financial effect on sources of income to her,

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depending on the listing arrangements for sale of lots and homes in the new subdivision. This is a factual question for the official to decide.

John W. Stovall
Reclamation District No. 1608
Dated: June 16, 2004
File Number A-04-111

A member of the board of trustees of a reclamation district may participate in board decisions concerning the dredging of a slough, even though the official owns residential real property with a boat dock extending into the slough. The circumstances in this case invite application of regulation 18704.2(b)(2), which provides that real property is only indirectly involved in decisions concerning repair or maintenance of adjacent existing streets, water, sewer, storm drainage or similar facilities, giving rise to a presumption that any reasonably foreseeable financial effect on this property will not be material.

William W. Wynder
City of Carson
Dated: June 15, 2004
File Number A-04-116

Two city council members were advised they did not have a conflict of interest in voting on settlement of an election contest case in which the council members' election to their positions was challenged. The mayor pro tem was also advised regarding a potential conflict of interest where one of the contestants in the case is a business tenant and source of income of the mayor pro tem.

Stephen A. Kronick
Templeton Community Service District
Dated: June 24, 2004
File Number A-04-120

It is presumed that the financial effect of a groundwater decision relating to property located more than 500 feet from the properties of two officials is not material. The officials must evaluate whether the presumption is rebutted.

Thomas M. Hagler
U.S. Environmental Protection Agency
Dated: May 13, 2004
File Number A-04-020

As members of a state agency, the six federal members of the California Bay Delta Authority are required to comply with the Act's financial disclosure and conflict-of-interest provisions.

Gerald E. Raycraft
City of Suisun
Dated: May 19, 2004
File Number I-04-087

Since no facts were provided regarding specific governmental decisions, an individual who is considering a position as the city community development director was provided informal assistance with respect to the Act's conflict-of-interest provisions where he owns property potentially within 500 feet of the proposed redevelopment area and has certain other economic interests as well.

Michelle E. De Guzman
City of Emeryville
Dated: May 27, 2004
File Number A-04-100

It is presumed that an official's real property will experience a material financial effect as a result of decisions regarding the Emeryville Marketplace, located within 500 feet of the property. However, the official may participate because the "public generally" exception applies based on the facts provided by the official.

Stacey Simon
County of Mono
Dated: April 15, 2004
File Number I-04-013

Two members of a fishery commission are not subject to the Act's conflict-of-interest provisions because they are not "public officials" within the meaning of the Act as the newly created commission does not possess decision-making authority.

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Michael R.W. Houston
La Quinta Chamber of Commerce
Dated: April 26, 2004
File Number A-04-026

A city council member was advised that placing an advertisement, for which he would pay fair market value, for his private accountancy firm in a local chamber of commerce newsletter that was funded in part by city funds would violate the mass mailing provisions of the Act. The proposed advertisement included a photograph of the council member in a group photo of the firm and included the last name of the council member as part of the firm name.

George H. Eiser, III
City of National City
Dated: April 9, 2004
File Number A-04-033

A mayor is presumed to be prohibited from participating in decisions regarding property within 500 feet of his leased residence. However, this presumption may be rebutted pursuant to regulation 18705.2(a)(2), relating to leasehold interests. The "public generally" exception did not apply because there were insufficient facts regarding the "substantially the same manner" prong.

Dennis Beougher
City of Brentwood
Dated: April 9, 2004
File Number A-04-037

A city council member is advised that he does not have a conflict of interest and may participate in a governmental decision involving real property owned by the lessor of his business lease where the property is located more than 500 feet from the council member's leasehold property.

Elizabeth Wagner Hull
City of Chula Vista
Dated: April 15, 2004
File Number A-04-052

Council members may not participate in interrelated educational revenue augmentation funding decisions unless the "legally required participation" rule is followed.

Linda Balok
Marin Healthcare District
Dated: April 23, 2004
File Number I-04-065

Due to the lack of facts regarding specific governmental decisions, a director of a local health-care district is provided informal assistance with respect to potential conflicts of interest involving her real property (apartment complex), business interests, and sources of income from property located more than 500 feet from the real property owned by the district, which is the subject of the governmental decisions.

John G. Barisone
City of Santa Cruz
Dated: April 15, 2004
File Number A-04-073

A city council member is advised on the application of the conflict-of-interest rules in the context of developmental decisions which may have an impact on a trust, which is a client of his architectural practice. The letter discusses the rules if the trust is a business trust, as opposed to a family trust.

Jim R. Karpiak
City of Fairfield
Dated: April 13, 2004
File Number A-04-077

A planning commissioner is prohibited from participating in consideration of a project because his home is 200 feet from the project site. Since the commissioner has a conflict of interest, any time that the decision will be considered at a noticed public meeting, the commissioner must: 1) immediately prior to the discussion of the item, publicly identify each type of economic interest involved in the decision as well as details of the economic interest as discussed in regulation 18702.5(b)(1)(B) on the record of the meeting; 2) recuse himself; and 3) leave the room for the duration of the discussion and/or vote on the item. However, the public official is not attempting to use his or her official position to make a governmental decision if the official appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function, solely to rep-

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resent himself or herself on a matter which is related to his or her personal interests, including the official's real property.

Rachel H. Richman
Alhambra City Council
Dated: April 23, 2004
File Number I-04-078

If an applicant for an appointment to a vacant council seat is a source of income to a council member, the council member will have a disqualifying conflict of interest which will prevent him from participating in the decision to appoint an individual to the vacant city council position. Depending on the facts, the "legally required participation" exception may apply if a quorum cannot be achieved due to conflicts of interest among the council members. Under the "legally required participation" exception, if a quorum of the city council is not available due to conflicts of interest and there is no alternative source of decision-making authority, the "legally required participation" exception applies. However, the exception would allow only the participation by the smallest number of officials with a conflict of interest in order for the decision to be made.

Thomas R. Curry
Sonoma Community Center
Dated: April 23, 2004
File Number A-04-082

So long as the decision to approve a living wage ordinance will not materially affect the Sonoma Community Center, the council member's nonprofit employer, he may participate in that decision.

Jolie Houston
City of Gilroy
Dated: April 29, 2004
File Number A-04-083

A public official is advised that an unpaid position on the board of directors of a 501(c)(3) organization is not a financial interest in the 501(c)(3) under the Act, and will therefore not disqualify him from decisions regarding the 501(c)(3).

J. Dennis Crabb
County of Alpine
Dated: March 11, 2004
File Number A-03-241

A county supervisor does not have a conflict of interest in making a governmental decision regarding proposed changes to the county scenic highway zoning regulations, absent factors rebutting the presumption that the financial effect of the governmental decision is not material.

Karin D. Troedsson
City of St. Helena
Dated: March 5, 2004
File Number I-03-285

General advice is provided regarding the conflict-of-interest provisions as they pertain to a council member who, along with his spouse, is employed in the housing industry and will be considering decisions involving housing projects in the jurisdiction. The letter explains sources of income are disqualifying for 12 months following the last salary received by the public official.

Tei Yukimoto
City of Fresno
Dated: March 9, 2004
File Number I-03-300

General advice is provided regarding a potential conflict of interest in renegotiation of a city's cable franchise agreement, when the public official holds stock personally and through a family trust in the franchise. The letter discusses the differences between a "family trust" and a "business trust."

Celia Brewer
Solano Beach City Council
Dated: March 5, 2004
File Number I-03-303

A council member inquires as to whether the "public generally" exception applies to him regarding a sand replenishment decision which may affect the value of his home. The information provided reflects the evaluation made by an appraiser hired by the city that concluded that the exception did not apply since a significant segment was not affected in substantially the same manner. Although the significant segment included all residential units, only those who

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qualify as homeowners appeared to be affected in substantially the same manner as the public official, and that amount was insufficient to reach the 10% threshold necessary to meet the criteria of the exception. The other residential units could be used for rental income. Such financial impacts on the official's real property must also be considered when calculating the financial effect of the decision on the official.

D. R. Peck

San Diego Centre City Advisory Committee

Dated: March 5, 2004

File Number I-04-007

General advice is provided regarding the application of the 500-foot rule of regulation 18704.2. The rule should be applied by identifying the closest points on the boundary of the official's property and that of the subject property, and then measured by a straight line between those two points.

Teresa E. Ascarate

City of West Covina

Dated: March 1, 2004

File Number A-04-012

A city council member was disqualified from participating in two decisions to approve a new fee schedule and funding for new picnic tables and benches in a city park. A conflict of interest was found because the council member had an interest in real property, her residence, which was located adjacent to the park (within 500 feet). Both agenda items were directly involved with her economic interest in her real property, and it was reasonably foreseeable that a material financial effect would occur.

Tei Yukimoto

City of Fresno

Dated: March 16, 2004

File Number I-04-031

A council member who has been allowed to hunt doves for ten years on property which is subject to a governmental decision on ground-water contamination, is determined to have been conferred a personal benefit constituting a gift under the Act.

Marguerite Battersby

City of Highland

Dated: March 15, 2004

File Number A-04-036

A mayor requests advice as to whether he may renew insurance policies he sold to the city. The mayor may not influence city decisions to renew the two insurance policies.

Guy D. Petzold

City of Stockton

Dated: March 19, 2004

File Number A-04-050

A candidate for city council is advised that proceeds from the sale of a water use awareness program to one or more governmental entities will not meet the exception in Gov. Code section 82030(b)(2) for governmental salary because they are proceeds from the sale of a business.

Kathryn Doi

City of Benicia

Dated: March 25, 2004

File Number I-04-076

Informal assistance is provided regarding the meaning of "property owner" for purposes of the "public generally" exception where a potential conflict of interest arises from real property. Each person who owns property is counted as one "property owner." Two persons who jointly own one parcel of property count as two "property owners." A "property owner" is a person who owns real property regardless of the percentage of ownership in the property that the person possesses. Each person with an ownership interest in a trust which owns property can be counted as a "property owner." An official may not merely count parcels of property instead of "property owners" (i.e., persons) to determine if the "public generally" exception applies.

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Conflict of Interest Code

Craig A. Steele
Los Angeles County Children & Families First

Dated: April 1, 2004

File Number A-04-072

A corporation created by a public agency in order to implement a "Universal Pre-School Program" is a local government agency because: 1) its impetus for formation originated from a governmental agency, 2) its sole funding source is a governmental entity, and 3) it was created to perform functions the governmental agency was authorized to perform. Under the *Siegel* analysis, the corporation is considered a "local government agency."

Roman M. Plachy
Amador County Deputy Sheriffs' Association

Dated: March 24, 2004

File Number I-04-064

Under new regulation 18329.5, a challenge to inclusion in a conflict of interest code must first be submitted to the agency and then the code reviewing body. For a county, the code reviewing body is the county board of supervisors.

Gift Limits

Harold D. Ferber
Department of Health Services

Dated: April 9, 2004

File Number I-04-040

A chief deputy director of a state agency is provided informal assistance that a gift returned after thirty days is considered a gift received and, therefore he may have a conflict of interest in any governmental decision affecting his economic interest in the source of the gift. The gift limit does not apply since the gift was accepted prior to the time he became a public official.

Brad Castillo
City of Fresno

Dated: April 16, 2004

File Number A-04-069

A city council member who had been offered free laser eye surgery (LASIK) and related services, which the laser company would document on film, would be receiving a personal benefit not available to members of the public without regard to official status. Therefore, the surgery and related services would constitute a gift to the official, unless he could prove that he provided consideration of equal or greater value. If he made an oral presentation as part of the documentary, the free eye surgery would constitute a prohibited honorarium, unless it qualifies as earned income.

William D. McMinn
Port of San Diego

Dated: March 11, 2004

File Number I-04-042

A designated employee of a governmental agency has received a gift when the employee transfers a gift he or she received to a third party. San Diego Unified Port District employees were provided a flyer with a contract code from Holland America Line offering them, their families and their friends discounts on specific cruises. The employee has received a gift in the amount of the discount when he or she provides the flyer, or the information on the flyer, to someone else. This is true even if the third party does not utilize the discount.

Amy Bisson Holloway
Department of Education

Dated: March 8, 2004

File Number A-04-043

Payments for travel made by a nonprofit foundation to a designated employee may be reportable under the conflict of interest code of the employee's state department. However, even if reportable, these payments would not be subject to the gift limit under regulation 18950.1(b). Such payments can also trigger disqualification. Regulation 18944.2, relating to "gifts to an agency," did not apply.

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Honoraria

Susan McKenzie, M.D.
Department of Industrial Relations
Dated: March 5, 2004
File Number A-04-011

A state agency was advised that reasonable travel expenses for department employees serving as speakers at continuing educational seminars, paid by the course providers for these seminars, were not prohibited honoraria or subject to the gift reporting limits of the Political Reform Act. Additionally, since the travel expenses are not "payments" as defined in the Act, they do not meet the definition of "income" or "gift" and therefore, do not qualify as economic interests under a potential conflict-of-interest analysis for employees who serve as speakers and who are also responsible for approval of the course providers, authorized by the department to provide the necessary continuing educational classes as required under the department's program.

John R. Valencia
CA Dept of Health Services
Dated: March 29, 2004
File Number A-04-034

A corporation is prohibited from making an illegal honorarium. However, an honorarium is prohibited only to the extent that the recipient public official would have to report income from the same source on the official's statement of economic interests. In the case where the members of a board have no disclosure obligations, the corporation is not prohibited from paying a member an honorarium.

Delilah Adriatico
Department of Health & Human Services
Dated: March 26, 2004
File Number I-04-053

An employee of a state administrative agency received general, informal assistance on the post-employment provisions of the Act. In addition, the employee was given advice on how the prohibition on receiving honorarium (section 89502) would not apply to income she earned through the sale of a book she authored. How-

ever, the employee was advised that if the predominate activity of her business, once the book is published, is to make speeches at seminars and workshops to train others in the methodologies described in her book, any income earned from that activity would be prohibited honorarium, as long as she remained a state employee.

Lobbying

Jane Levikow
Tides Center
Dated: May 27, 2004
File Number A-04-086

Under the facts presented, the Tides Center, by simply providing administrative services to its clients, is not a lobbyist employer. Each client that engages in lobbying should be registered as a separate lobbyist employer.

Lindsay Crane
Lake County Sanitation District
Dated: April 20, 2004
File Number A-04-032a

A lobbying firm which receives payments for lobbying through a consulting firm hired by the client is advised to register the actual source of the payments as the lobbyist employer and disclose the consulting firm as an intermediary.

Lindsay Crane
Lake County Sanitation District
Dated: March 18, 2004
File Number A-04-032

A lobbying firm was advised that payments for lobbying services received through an intermediary should be reported as coming from the true source, the entity on whose behalf the firm will be lobbying.

Mass Mailing

Timothy W. Boyer
State Board of Equalization
Dated: April 20, 2004
File Number A-04-080

Items sent in the normal course of business from one governmental entity or officer to another governmental entity or officer are exempt from

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the restrictions of section 89001. It appears that the handbook "Prosecuting Tax Evasion" issued by the Board of Equalization, and distributed to other governmental agencies and officials (i.e., the Office of the Attorney General, district attorneys, city attorneys and superior courts) is exempt from the prohibition of sending of mass mailings at public expense because it is an item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer.

Personal Use

Julia Miller
City of Sunnyvale
Dated: March 29, 2004
File Number I-04-035

A city council member wanted to use campaign funds to purchase lunch for other local officials from the city, and for a visiting delegation of officials from China. In order to use the funds, she must meet a higher standard by showing the meal is directly related to a political, legislative or governmental purpose because she receives a substantial personal benefit by attending. She should be able to meet this standard.

Stephen J. Kaufman
California Senate
Dated: March 8, 2004
File Number A-04-055

The use of campaign funds to cover a state senator and his spouse's travel, food and lodging when performing a marriage ceremony for a Senate staff member does not meet the standard of being directly related to a political, legislative or governmental purpose under section 89512 and 89513(a) of the Act, and therefore is not a permissible use of campaign funds.

Revolving Door

Richard A. Rogan
California Public Utilities Commission
Dated: June 17, 2004
File Number A-04-109

A court-appointed receiver, formerly employed by a state administrative agency was advised

that the one-year ban prohibited him from appearing before or communicating with that agency in connection with obtaining its approval to make a court-ordered sale of the assets of a regulated water utility which is in receivership. The courts are neither a state agency nor a local government agency, within the meaning of §§ 82049 or 82041 and thus the exceptions to the one-year ban applicable to employees of those agencies do not apply. However, the official was advised that under the state's Constitution, the courts fall within one of the three identified branches of state government. Thus, as an employee of the court, the official is representing the State of California and is not subject to the permanent ban.

Louis Blumberg
Department of Forestry & Fire Protection
Dated: May 4, 2004
File Number A-03-295

The Board of Forestry and Fire Protection is under the direction and control of the Department of Forestry and Fire Protection for purposes of the revolving door provisions of the Act. Therefore, a former deputy director for communications and legislation is precluded from appearing before the board for a period of one year after leaving state service.

Steven G. Churchwell
Kern County Water Agency
Dated: May 4, 2004
File Number A-04-063

A public official who left public service in 1989 and then returned to work for a state agency as a consultant in 2002 through the present and was a designated employee under its conflict of interest code had not "permanently left state service," as is required by regulation 18741.2 for application of sections 87401 and 87402. Therefore, the "revolving door" provisions of the Act were not applicable to the official when considering whether he could perform consulting services for another public entity. However, conflict-of-interest issues may exist, as well as issues outside of the Act, such as those arising from Government Code section 1090 or the doctrine of incompatible offices.

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Ben Davidian
Department of Insurance
Dated: April 13, 2004
File Number A-04-054

A former state employee who was a legislative analyst was advised that he was not subject to the "revolving door" provisions of the Act because his former position was not designated in the agency's conflict of interest code and he did not hold a position which entails the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest.

Mary Lou Gusman-Davis
Department of Finance
Dated: April 23, 2004
File Number I-04-066

The Act's post-employment restrictions do not prevent an official from accepting private employment while she is "running out" vacation time prior to retirement from state service. However, other bodies of law, such as Government Code §1090 and provisions relative to activities incompatible with her government employment, may limit her activities while she remains a state employee. The 12-month post-employment period during which she may not make appearances before her former agency employer does not begin to run until she has separated from state service, and this ban applies to any state agency for which she had worked over the prior twelve months, including any agency which employs her during the period immediately prior to her separation from state service. The permanent ban on "switching sides" may also limit her post-employment activities.

Jonna A. Ward
CA Health & Human Services Data Center
Dated: March 15, 2004
File Number A-04-016

A contractor with a state agency was advised regarding the applicability of the one-year "revolving door" ban. Specifically, advice was given on the expiration date for the one-year ban, applicable under her circumstances. In addition, the contractor was advised that the fact

she was not required to file a Form 700 with a state agency with whom she contracted does not, alone, determine whether the post-employment provisions of the Act apply to her. Even if a position is not designated in an agency's conflict of interest code, if an individual in that position makes or participates in making governmental decisions, the post-employment provisions apply.

George David Singleton
Department of Housing & Community Development
Dated: March 23, 2004
File Number A-04-021

A former state employee is advised on the applicability of Government Code sections 87401 and 87402 ("the permanent ban") on prospective employment with state contractors, local governments and tribal governments, and on testimony before the state Legislature.

Section 84308

Clark H. Alsop
San Bernardino County Local Agency Formation Committee
Dated: June 21, 2004
File Number A-04-079

While "entitlement for use" does not have a set legal meaning, the term generally does not cover proceedings where general policy decisions or rules are made or where the interests affected are many and diverse. Consistent with this conclusion, a proceeding involving the dissolution of a community services district (which encompasses approximately 1,730 square miles of territory, including all of the territory within three cities and the unincorporated area of the county) is not a proceeding involving an entitlement for use. Thus, section 84308 does not apply.

W. Andrew Hartzell
County of San Bernardino
Dated: March 2, 2004
File Number I-03-273

A county board of supervisors was advised regarding the application of Government Code section 84308, specifically the time periods con-

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tained in that section. Government Code section 84308 disqualifies any “officer” of a public agency from participating in certain proceedings if the official has received campaign contributions of more than \$250 from a party, participant or their agents within the 12 months preceding the decision. It also requires disclosure on the record of the proceeding of all campaign contributions received from these persons during that period. In addition, section 84308 prohibits solicitation or receipt of campaign contributions in excess of \$250 during such proceedings, or for 3 months after the decision, from parties, participants or their agents. The advice explains that the statutory rule of 3 months should be applied by counting 3 months from the day after the proceeding.

Statement of Economic Interests

Diane Eidam
California Transportation Commission
Dated: May 20, 2004
File Number A-04-028

Members of a state advisory panel are not required to file SEIs because they are not members of a board or commission with decision-making authority. The panel makes no final decisions and has no authority to compel decisions. Over time, it may establish a history of decision making, but no such history presently exists.

